IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5945 of 1992
with
SPECIAL CIVIL APPLICATION NO. 2454 OF 1995

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T C

Versus

S T KARMACHARI MANDAL

Appearance:
MR HARDIK C RAWAL for GSRTC.
NOTICE SERVED for Respondent No. 1
MR BG JANI for WORKMAN CONCERNED

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr.Hardik Raval for the Corporation and Mr.B.G.Jani for the workman concerned.

Common award made by the Industrial Tribunal in Reference (IT) NO. 36 of 1990 is under challenge in these two petitions. While admitting the petition filed at the instance of the Gujarat State Road Transport Corporation, this Court has granted interim relief in terms of para 8(b). Learned advocate Mr.Raval appearing for the corporation has submitted that the tribunal has come to the conclusion that the non issuance of proper tickets to the passenger was with an oblique motive to misappropriate the excess amount of Rs.120 plus 32 as admittedly the amount of Rs.120.00 would be the property of the corporation. He has submitted that, thus, misconduct of dishonesty and misappropriation has been found to be proved against the workman concerned and the findings recorded by the competent authority were considered to be legal and proper and, therefore, interference of the tribunal only on the ground that clause 22 and 27 are not applicable to the facts of the case is unjustified and the tribunal has, therefore, erred in modifying the order of punishment passed by the competent authority.

On the other hand, learned advocate Mr. B.J.Jani appearing for the workman concerned has submitted that the no error has been committed by the tribunal in coming to the conclusion that clause 22 and 27 are not applicable to the facts of the present case and the tribunal has exonerated the workman concerned in respect of the charges of contravention of clause 22 and 27. He has submitted that the tribunal is having power to modify the order of punishment and for that, the tribunal has given cogent and convincing reasons in para 10 of the award in question and thereafter has modified the punishment from cumulative effect to that without cumulative effect and that is the proper award made by the tribunal which would not require any interference of this court in exercise of the powers under Article 226/227 of the Constitution of India.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award in question made by the tribunal concerned. As per the case of the corporation, on 31.10.1986 while the workman concerned was on duty in ST Bus No. 8614 from Surat to Rajkot, his bus was checked by the checking staff near Jalaram Temple at Dharmaj at 12.45 hours and after checking the same, report was made against the concerned workman on 19.11.1986 on the charges that he collected bus fare of Rs.788.00 from one group of the passengers consisting of 17 adults and 11 minors i.e. 22 full and one half who were travelling in that bus from

Surat to Rajkot and though the fares at the rate of Rs.33.60 ps. per ticket came to Rs.756.00 and thus he collected excess amount of Rs.32.00 while he issued tickets only of Rs.636.00 and thereby issued tickets of less amount of Rs.120.00 and therefore it was alleged that he has committed breach of clause 7(a), 12(b), 22 and 27 of Schedule A of the GSRTC Discipline and Appeal Procedure and he was served with charge sheet and after completion of the departmental proceedings, punishment of stoppage of eight increments with cumulative effect was imposed upon the workman by the competent authority and in the appeal before the appellate authority, punishment was modified and instead of eight increments, five increments were stopped with cumulative effect against which industrial dispute was raised which was referred to for adjudication.

Before the tribunal, legality, validity and propriety of the departmental inquiry was not challenged by the workman and the tribunal has gone through the entire papers of inquiry and other documents produced by the corporation which were on record and has come to the conclusion that the inquiry conducted against the workman is legal and valid and thereafter, the tribunal has come to the conclusion that the inquiry officer has rightly come to the conclusion that the charges levelled against the workman are proved against the workman. In para 9 of the award, the tribunal has observed that in any view of the matter, the findings recorded by the competent authority against the concerned workman are absolutely correct and it has been rightly held that he contravened the aforesaid clauses of the procedure. Clause 12(b) thereof is pertaining to the dishonesty and misappropriation of the property of the Corporation and if that charge is found to be proved, it is considered to be serious misconduct and there is no question of altering the punishment imposed by the corporation and once the appellate authority has rightly modified the punishment having sympathetic approach in favour of the respondent, thereafter, further modification in respect of such serious misconduct is not warranted in the facts and circumstances of the case. On the contrary, the view taken by the apex court recently is to the effect that in such cases, the only proper punishment is the punishment of dismissal and, therefore, according to my opinion, the tribunal has committed an error in considering that clauses 22 and 27 are not applicable. The tribunal has also erred in exonerating the workman concerned the workman in respect of the serious charge of dishonesty and misappropriation. Therefore, according to my opinion, the tribunal has committed basic error in

altering the punishment in exercise of the powers under section 11-A of the Industrial Disputes Act, 1947. Consequently, the award in question made by the industrial tribunal in Reference No. 36 of 1990 is required to be set aside and the said reference is required to be ordered to be dismissed.

For the reasons recorded hereinabove, Special Civil Application No. 5945 of 1992 filed by the petitioner Gujarat State Road Corporation is hereby allowed. The award made by the industrial tribunal in Reference No. 36 of 1990 dated 28th November, 1991 is hereby quashed and set aside and the said reference is hereby ordered to be rejected. Rule is made absolute. There shall be no order as to costs.

Special Civil Application No. 2454 of 1995 filed by the workman concerned challenging the award in question is hereby dismissed. Rule issued in the said petition is hereby discharged. There shall be no order as to costs.

11.4.2002. (H.K. Rathod,J.)
Vyas